

An Introduction to Rhode Island Paternity and
Child Support Laws
by Sharon A. Santilli, Esquire

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AN INTRODUCTION TO RHODE ISLAND
PATERNITY AND CHILD SUPPORT LAWS

Domestic Relations Seminar

Presented by:
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Division of Taxation
Child Support Enforcement

P R E F A C E

This outline is intended for the attorney with limited Family Court experience in paternity and child support issues. It is designed to provide that attorney with a practical approach in handling these types of matters.

The objectives consist of the following:

1. To provide the attorney with an overview of paternity and child support laws and procedures;
2. To provide an understanding of the nature of the Reciprocal Court and the role of the Department of Administration, Division of Taxation, Child Support Enforcement.
3. To introduce the applicable forms and documents.

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INTRODUCTION

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OVERVIEW

The Rhode Island Department of Administration, Division of Taxation, Child Support Enforcement is located at 77 Dorrance Street, Providence, Rhode Island.

Child Support Enforcement Office of Legal Counsel is located at 77 Dorrance Street, Providence, Rhode Island, Third floor. The telephone number is 277-2847. Chief Counsel, Sharon A. Santilli supervises the Legal Unit. There are eight (12) staff attorneys, four (9) paralegals and four (4) clerical workers who comprise the Legal Unit. The Legal Unit also has a full support staff of approximately fifty (50) Child Support Case Workers and Supervisors.

All notices, pleadings, subpoenas relative to child support or paternity should be mailed or served at 77 Dorrance Street, Providence, Rhode Island 02903. Service by constable upon the Legal Office is not necessary for most motions. Service by mail is sufficient.

Child Support Enforcement cannot divulge any personal information about custodial parents. Many times attorneys will request the address of a custodial parent for the purpose of serving her with a motion for visitation. If you require address information for an authorized purpose to establish paternity, to establish, and enforce child support, visitation and custody) pursuant to state and federal law, you must follow the procedures and utilize the forms contained in the appendix. The child support agency is the authorized entity in child support and paternity matters. The RI Family Court is the authorized entity for custody and visitation matters. The Court works closely with the child support agency in any event. If any address information is contained in the court file it is of public record. So if the plaintiff's address appears in the file, it is available for use. You should begin with the court file before beginning the procedure to request the address. The procedure to request an address is set forth in the appendix.

The Rhode Island Department of Administration, Division of Taxation, Child Support Enforcement administers a joint Federal/State program to establish and enforce child support from non custodial parents. The program is divided into two basic categories.

The first category consists of all individuals receiving benefits under the Family Independence Act (FIP). These individuals will automatically be referred to a child support agent to begin the process of pursuing the non custodial parent for purposes of establishing paternity and collecting child support and medical support. There is no fee charged to the applicant for this service.

The second category consists of all individuals in need of obtaining child support services. The fee for services rendered in this category is \$20.00. There are no financial qualifications for this service.

The child support program provides four essential services; locating the non custodial parent whose whereabouts are unknown; establishment of paternity; establishment of child support, and enforcement of child support. These services are available regardless of whether the non custodial parent resides in this state pursuant to the Uniform Interstate Family Support Act (UIFSA).

Ultimately, the non custodial parent is brought before the court and ordered to pay child support by wage withholding. All payments are made through the Family Court. If the custodial parent is a recipient of FIP, the payments are retained by the State except for the first \$50.00 collected per month. This sum is forwarded to the recipient as an incentive for their cooperation in pursuing the non custodial parent as provided by Federal Law. Although the federal government abolished the \$50.00 defra, the State of Rhode Island has chosen to continue to pay the \$50.00 defra from state funds. If the custodial parent is not a recipient of FIP, the payments collected are forwarded to this individual.

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PATERNITY
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I. Overview

There are few matters that have more of an emotional strain on individuals than a paternity lawsuit. The parties were once romantically involved and now probably abhor one another. To add to the situation, they may now be romantically involved with someone else who would like to contribute their thoughts. The fact that they now have to "air their dirty laundry" in a public courtroom can bring out a great amount of animosity.

Both parties seek to "win at all costs". Oftentimes, the woman fights to protect her reputation and the man tries to avoid his responsibility. The forgotten individual can be the child.

These facts should be considered when you meet the custodial parent, either man or woman, for the first time.

II. INITIAL INTERVIEW WITH CUSTODIAL PARENT

A. Gathering Facts

Your client either wishes to file a paternity complaint or has been served with a complaint.

When you meet your client for the first time, it is a good practice to conduct a thorough intake of information.

Be sure to obtain that information which is crucial to a paternity action such as your client's full legal name, including his middle name, address, telephone number, date of birth, place of birth, race, place of employment, work telephone number, gross weekly wages and social security number.

It is important to advise the alleged father about dna testing and past liabilities as follows:

Child Support Enforcement will pay dna tests costs initially but will seek reimbursement if the defendant is adjudicated to be the father. The fee is \$200.00 for dna tissue typing for three people.

Pursuant to Section 15-8-4 of the Rhode Island General Laws, the State may pursue past liabilities for a period of six (6) years prior to the filing of a complaint. Generally, if your client acknowledges paternity after dna testing is conducted, the State will waive past liabilities owed to the State. If the case proceeds to trial, the State will pursue all past liabilities including

support and medical which may total thousands of dollars. Your client should be well informed of this claim.

Naturally, in a non-FIP case, the plaintiff mother may pursue past liabilities whether or not a trial results.

When responding to a paternity complaint, the answer must be accompanied by a sworn affidavit setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact during the probable period of conception pursuant to R.I.G.L. Section 15-8-11.

B. Ethical Considerations

An attorney has a duty to reject or withdraw from a case if the client is seeking to have that attorney engage in any type of illegal or unethical conduct, or present frivolous claims or defenses. If your client has been ordered to attend dna testing and advises you he intends to send another in his place you should withdraw. Or if your client wishes to file a paternity complaint against an individual even if she knows he cannot be the father, you should not proceed.

C. Fee Agreement

Handling an uncontested paternity action will take a minimum of five (5) billable hours, so be sure to indicate the time factor to your potential client and bill accordingly. Any concerns or potential problems that you feel may arise with this case should be indicated to the client at this time.

If your client still seeks your representation in this matter, a specific agreement should be signed by you and the client. The agreement should indicate the professional services to be performed and how the counsel fee should be paid. If there is a retainer agreement, the terms of such should be clearly indicated. A signed agreement is recommended by the Rhode Island Supreme Court Disciplinary Board.

III. APPLICABLE LAW

A. R.I.G.L. Section 15-8-1 et al Uniform Law on Paternity

This section of the law is a good starting place. It provides important information such as the obligations of the father, jurisdiction, venue, dna testing, evidence, child support, bonds, birth records and appeals.

A typical scenario involves a woman who is legally married to one individual and has a child with another individual. In this situation, the husband is presumed to be the father. This presumption is indicated in R.I.G.L. Section 15-8-3 and is entitled, "Presumption of Paternity". In order to resolve this situation, this presumption must be rebutted. A starting point may be to obtain an affidavit of denial from the legal father, and an affidavit of acknowledgment from the natural father. In the alternative, dna testing may be requested by the legal father. An exclusion may form the basis to rebut the legal presumption. Use caution with the latter

procedure when representing the mother since the legal father's name may be removed from the birth certificate leaving the father's space blank and consequently the child without a father.

B. Discovery

The usual forms of pre-trial discovery apply to a paternity action such as interrogatories, request for admissions and depositions. The State utilizes request for admissions in every paternity case. Be sure to respond within 10 days or your answers will be deemed admitted and form the basis, along with the paternity test results, for a motion for summary judgment.

C. Jury or Bench Trial

Trial by jury has been abolished in Rhode Island. In order to claim a bench trial, he must make demand within ten (10) days of filing the Answer or it is deemed to be waived.

Should your client desire a bench trial, you may want to contain this request within your Answer.

D. Statute of Limitations

1. R.I.G.L. Section 15-8-6, "Statute of Limitations":

"An action to determine the existence of the father and the child relationship is not barred until four (4) years after the child reaches the age of majority."

This statute was amended in 1996 since it was very ambiguous and resulted in a great deal of litigation. Now it is clear that a paternity action may be filed up until four (4) years after majority.

2. R.I.G.L. Section 15-8-4, "Limitation of recovery from the father".

"The father's liabilities for past education and necessary support and maintenance are limited to a period of six (6) years next preceding the commencement of an action hereunder."

3. R.I.G.L. Section 15-8-5. "Limitations of recovery from father's estate."

The father's estate is liable to those amounts which accrued prior to his death.

E. Rights of Putative Father

A putative father may file a paternity complaint under the Rhode Island Uniform Paternity Act. He may also complete an affidavit of paternity at the hospital, Vital Records, and

the Department of Administration, Division of Taxation, Child Support Enforcement, if the mother is in agreement.

IV. PATERNITY TESTS

A. R.I.G.L. Section 15-8-11, "Authority".

This section allows the court to grant a party's request for paternity testing or order it sua sponte. A dna test is extremely accurate and scientific and will result in an exclusion of the possibility to parentage or a very high probability of paternity. Over the past few years significant amendments have been made to R.I.G.L. Section 15-8-11 as follows. The Child Support Enforcement agency may schedule blood testing upon receipt of a denial. A court order is not required.

◇ The dna testing restriction relative to an infant under six (6) months of age has been removed.

◇ If the dna test results indicate a 97% probability of paternity, a conclusive presumption exists.

◇ DNA test results may be introduced into evidence without the necessity of laying the foundation unless an objection has been filed ten (10) days before the hearing.

B. Qualified Genetic Testing Examiners

Recently the State has contracted with LabCorp, a duly qualified expert dna testing facility.

The two most common types of testing are HLA, (Human Leukocyte Antigens), red blood cell testing and DNA (Deoxyribonucleic Acid). LabCorp conducts dna testing through buccal swabs.

When Child Support Enforcement is involved in the case and paternity tests are required, Child Support Enforcement will schedule the tests and pay the initial costs. If the defendant is adjudicated the father, the State will be seeking reimbursement. The cost of dna testing is \$200.00.

Pursuant to R.I.G.L. Section 15-8-11, if the results establish a 97% or greater probability of paternity, it shall constitute a conclusive presumption.

V. Change of Name

Pursuant to R.I.G.L. Section 23-3-10 (d)(2), if the father and mother were not married at the time of the child's conception or birth, the child must bear the mother's surname unless the father and mother sign an affidavit of paternity at the hospital or at Vital Records. Once an adjudication takes place, the natural father may seek to change the child's surname from that of the mother to that of the father. To determine whether the father's request will be granted, the test is the "best interest of the child."

In Ribero vs. Monahan, 524 A.2d 586, the Rhode Island Supreme Court held that:

1. Traditional view at common law was that the child bore the surname of his or her father, but current standards to be employed in surname disputes is best interest of the child;
2. Best interest of child who resided in mother's household required that child retain mother's surname which was same name of members of household in which child resided and was name on child's birth certificate.

Child Support Enforcement will not file a petition for a name change only. The forms are available at Family Court. Name changes will be requested within the context of a petition for voluntary acknowledgment only.

VI. UNCONTESTED PATERNITY MATTER

A. Procedure

The preceding information is not to give the impression that all paternity matters are contested. This is quite to the contrary. Many paternity cases are resolved once a dna test has been performed.

Generally, a paternity case proceeds as follows:

1. Once the father is located a paternity complaint is filed.
2. Alleged father submits a denial and an affidavit.
3. DNA tests are scheduled. A letter will be sent to counsel with a map to the testing facility. Counsel is to notify their client of the date and time.
4. Test results will not be forwarded to defense counsel by the facility. Results will be attached to Requests for Admissions.
5. When necessary, additional discovery will be filed.
6. A motion for summary judgment will be filed based upon the dna test results and responses to request for admissions.

7. At the hearing on the motion for summary judgment either an acknowledgment will be entered, or a trial date will be scheduled.

In an uncontested matter, the court's concern is that the parties are not engaging in some form of fraud, and that the natural father understands his rights and is making a full and voluntary acknowledgment.

Once the court is satisfied, an adjudication of paternity is rendered. This process takes only a few minutes in court but must be placed on the record. A waiver of confidentiality must be stated on the record as well. The court will order the Rhode Island Department of Health, Division of Vital Records to add the natural father's name, date and place of birth to the child's birth certificate. If requested by the parties, the court will also change the child's surname to that of the father and the Division of Vital Records will be ordered to amend the child's birth certificate to reflect the change.

B. Voluntary Acknowledgment

The natural father may voluntarily acknowledge paternity by:

1. signing an affidavit of paternity at the hospital upon the birth of the child. The affidavit is forwarded to the Division of Vital Records which results in the father's name being added to the birth certificate.
2. filing a Petition for Voluntary Acknowledgment at Family Court pursuant to R.I.G.L. Section 15-8-27. A court date is assigned to formalize the acknowledgment on the record.
3. signing an affidavit of paternity at the Child Support Enforcement Agency. The mother must accompany the natural father and must be willing to sign the form. No court date is required for the acknowledgment. The affidavit is forwarded to the Division of Vital Records which results in the father's name being added to the birth certificate.
4. applying for IV-D services and filing a petition for voluntary acknowledgment through the Department of Administration, Division of Taxation, Child Support Enforcement. These services are provided to welfare recipients and/or the alleged father without the necessity of applying for services.
5. by making an appointment with the Department of Health, Division of Vital Records to complete an affidavit of paternity.

Please note the surname of the child cannot be amended by completing an affidavit of paternity. Only the court can change the last name of a child.

Pursuant to R.I.G.L. Section 15-8-3 (a)(6), the sworn acknowledgment of paternity becomes a conclusive presumption if there is no court challenge within sixty (60) days of signing. The only defenses which may be raised after the sixty (60) day period are fraud, duress or mistake of fact.

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~ CHILD SUPPORT ~
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I. CHILD SUPPORT FORMULA AND GUIDELINE

A. R.I.G.L. Section 15-5-16.2

Pursuant to the Income Shares model developed by the National Center for State Courts under a grant from the U.S. Office of Child Support Enforcement, a child support payment formula and guideline was enacted into law on October 1, 1987. This child support formula and guidelines, commonly referred to as the "guidelines" provides a method of determining a fair and equitable child support order. The guideline contains a monthly gross income schedule ranging from \$600.00 to \$20,000.00. (A copy of the guideline chart is attached).

To accurately reflect the increase in cost of supporting children, the guidelines were modified on June 6, 1988 on October 15, 1992 on November 1, 1997 and more recently on October 1, 2002. The court issued administrative order 2002- 3 to offer guidance when applying the guidelines. Administrative Order # 2002-3 should be read in conjunction with order #87-2. Both orders are contained in the appendix.

Pursuant to Section 15-5-16.2 of the Rhode Island General Laws the court shall make findings of fact based upon the following:

1. The financial resources of the child;
2. The financial resources of the custodial parent;
3. The standard of living the child would have enjoyed had the marriage not been dissolved;
4. The physical and emotional condition of the child and his educational needs;
5. The financial resources and needs of the non-custodial parent.

In every matter of child support regardless of whether it is contested or uncontested, a guideline worksheet must be presented to the court by the parties. The primary responsibility to file this worksheet with the court lies with the moving party.

B. Miscellaneous Child Support Issues

1. Pursuant to Section 15-5-16.2 (f) the court, upon a finding that an able-bodied parent is unemployed or underemployed shall order such parent to perform unpaid community service for a least twenty (20) hours per week. This applies to proceedings brought on behalf of children receiving FIP.

2. Pursuant to Section 15-5-16.2 (g) the parent of a minor parent may be responsible to reimburse the department if AFDC is being remitted. The obligation is joint and separate between the parent and minor parent.

C. Application of the Guidelines

In order to apply the guidelines there are at least six (6) steps to follow:

First, you must obtain a guideline worksheet which can be provided by the clerk of the court. The guideline worksheet was revised in 2002 to accommodate cash medical support. (A sample form is included in the appendix of this outline.);

Second, you begin your calculations by obtaining the gross weekly wages of both parents and multiply this amount by 4.3. This procedure gives you the average monthly gross wages of each parent. (There is an average of 4.3 weeks per month.);

Third, list the required deductions on the worksheet, namely health insurance, pre-existing child support payments and additional minor dependents. Effective 12/1/97 a new line was added for additional dependents. This will give you the average monthly adjusted gross wages of each parent. A pre-existing child support order is a monthly child support order the obligor has been ordered to pay in another case or additional minor dependents is a new family that the obligor is supporting.

It is important to note that administrative order 97-8 specifically addresses the issue of additional minor dependents and offers a recommended approach. The order provides that a deduction not to exceed 50% of the child support obligation for the additional children should be calculated by taking into account the combined gross income of both parents of the additional children.

A second guideline worksheet need not be filed with the court so long as the court is satisfied that the deduction is accurate.

It is also important to note that administrative order 2002-3 specifically addresses the issue of medical support. If the child is covered by health insurance through the parent's place of employment, at the time the child support order is established, the child shall continue to be covered under that plan. If the child could be covered through the parent's employer, the parent shall be ordered to provide the coverage if it is at a reasonable cost. Reasonable has been defined as 5% of the parent's gross income. If on the other hand the cost is over 5%, the parent may be ordered to contribute cash medical support, weekly or monthly, at a rate of 5% of the obligor's gross income, in addition to the child support order. The maximum that may be collected is the actual cost of the coverage. The cash medical order is reflected on line 12 of the worksheet. Parents shall continue to receive an above the line deduction for any health insurance premium paid for the child on line 2b as well as an above the line deduction for the cash medical order.

Fourth, combine each parent's average monthly adjusted gross wages and list this amount on the worksheet. Also, determine each parent's percentage share of income from the combined amount and list each of these figures on the worksheet;

Fifth, look at the guidelines under the "gross income" column. As you can see, this column is in increments of fifty (\$50.00) dollars. You must determine the amount closest to your combined amount listed on the worksheet. (If the combined amount is in excess of the amount in the "gross income" column, you need to use the next highest increment listed on the guidelines.) Once you have located the appropriate amount in the "gross income" column, look to the right side of the guidelines under the applicable number of children. This figure is the total child support obligation and should be listed on the worksheet. Next add the day-care expenses to the total monthly obligation giving the appropriate tax credit.

Lastly, multiply the non custodial parent's percentage share of increase (step four), by the total child support obligation (step five), to determine that parent's monthly child support obligation. To determine the non custodial parent's weekly child support obligation, divide the monthly child support obligation by 4.3. Both the monthly and weekly child support obligations should be listed on the worksheet.

It is important to note that the child support guidelines worksheet considers optional adjustments that would further reduce a parent's monthly adjusted gross income. However, the adjustments are totally within the discretion of the court. The adjustments include previous retirement payments, life insurance payments, parent's extraordinary medical expenses, income tax adjustments and payments of original marital debts.

The Family Court also has discretion in ordering child support above or below the amount suggested by the guidelines when the court finds that the order would be inequitable to the child or either parent. When exercising this discretion, the court should make specific findings of fact and write them on the back of the guideline worksheet.

D. Child Support Guidelines Examples

The following ten examples of child support guidelines worksheets are designated to depict a variety of factual situations.

E. Modifications of Existing Order

Pursuant to Section 15-5-16.2 of the R.I. General Laws, a child support order may be modified only if there is a substantial change of circumstances. A substantial change of circumstances shall not have occurred if it results in a new child support order that is less than ten (10%) percent higher or lower than the prior order of support. The moving party has the burden of proof. [See Ciallela v. Ciallela, 320 R.I. 81 (1954)].

An example of a substantial change in circumstances that could result in an increase in child support is when the custodial parent faces an increase in educational or day-care expenses while the non-custodial parent receives an increase in wages.

A common example of substantial change in circumstances that would result in a decrease, or, perhaps a temporary suspension in child support, is when the non-custodial parent has been terminated from employment.

R.I.G.L. Section 15-13-3, "Recommendation of Support Orders", provides that if a child support order is entered pursuant to a divorce decree and the custodial parent becomes a recipient of FIP subsequent thereto, the Department is entitled to a hearing de novo on the issue of support. This is because the Department has not a party to the initial action.

R.I.G.L. Section 15-5-16.2(c), "Retroactive Modification of Child Support", allows the court discretion to modify or suspend a child support order retroactive only to the date that the adverse party received notice of said petition.

Pursuant to federal and state law, Section 15-5-16.7 of the Rhode Island General Laws, the Department of Administration, Division of Taxation, Child Support Enforcement may review child support orders in all cases where support rights have been assigned to the State, or at the request of either party every three (3) years from the date of last review upon request. Accordingly, the Department may be filing a motion for review and adjustment and requesting that the court apply the guidelines and order a guideline order regardless of whether the application results in an upward or downward modification.

II. R.I.G.L. Section 15-16 INCOME WITHHOLDING (GARNISHMENT)

A. Overview

The purpose of garnishment is to enhance the enforcement of support obligations by providing a quick effective way of collecting child support.

Pursuant to R.I.G.L. Section 15-16-5.1 and 15-5-25, all child support orders issued, enforced or modified after January 1, 1994 are subject to immediate wage withholding unless the court finds that there is:

1. good cause not to impose wage withholding, or,
2. if the obligor and obligee (department) enter into a written agreement or order which provides for an alternative arrangement for the timely payment of support due under the support order.

The statute was amended in 1994 to include all child support orders, including non-IV-D cases.

The garnishing agent can deduct the sum of two (\$2.00) dollars per month from the obligor's wages to cover the cost of expenses in transmitting the support payments.

Title 15, Sections 1672 and 1673 of the United States Code, entitled the "Federal Consumer Protection Act" provides the following exemptions to income withholding.

1. Only disposal earnings are subject to income withholding. Disposable earnings is defined in Section 1672 as "that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld." Federal, State and Local income and employment taxes would therefore be deducted from your gross earnings in determining disposal earnings.
2. The income withholding order may not exceed the following maximums permitted under Section 1673.
 - a. If you are supporting a spouse or dependent child other than the spouse or child with respect to whose support the order is issued, the maximum amount of your disposal earnings that may be withheld is 50% of such earnings, unless you are twelve (12) weeks or more in arrears, in which case the maximum is 55% of such earnings.
 - b. If you are not supporting a spouse or dependent child other than the spouse or child with respect to whose support the order is issued, the maximum amount of your disposal earnings that may be withheld is 60% of such earnings unless you are twelve (12) weeks or more in arrears, in which case the maximum is 65% of such earnings.

B. Employment Notification

Pursuant to Section 15-20-1, the department shall notify the current employer of the existence of a child support order so that the wage withholding order shall continue.

Further, the employer must notify the department within 10 days of the termination of the employee.

Pursuant to Section 15-20-2, when the obligor parent changes employment, he/she must notify his new employer of the wage withholding order and must notify the department.

Chapter 24 of Title 15 entitled "Reporting of New Hires" requires employers, under certain circumstances to report all new hires to the CSE agency. Upon learning of the new employer, the CSE agency can send a new DR-29 provided a garnishment order was previously entered by the court. In this manner wage withholding may continue uninterrupted.

III. MEDICAL SUPPORT

Pursuant to Section 15-5-16.2 (d2) any order for child support shall contain a provision for health coverage when coverage is available to the parent through their employment without cost or at a reasonable cost. Reasonable cost has been defined in administrative order 2002-3 as coverage provided through an employer which is less than 5% of the obligor's gross monthly income. If the cost of coverage meets the threshold, the obligor will be ordered to maintain the coverage for the child. A national medical notice will be sent directly to the employer informing the employer to enroll the child(ren). The law, which addresses the national medical notice, is contained in Chapter 29, Title 15 and was passed in July of 2002. If the coverage represents more than 5% of the obligor's monthly income, the Court may order the obligor to contribute 5% of the monthly gross income as cash medical order. This amount is in addition to the child support order and would also be garnished from the obligor's wages.

Section 15-5-16.2.5 provides that if the CSE agency determines an employee/obligor has medical coverage available, and has failed to enroll the minor child after being ordered to do so, the agency may send notice to the employer to enroll the child. The employer must enroll the child in the least expensive plan available. If the plan is cost prohibitive, the obligor must file a motion with the court requesting relief. It is not incumbent upon the employer to determine this. The court determines the issue.

IV. FILING OF PRIVATE CHILD SUPPORT ORDERS

A. STATE REGISTRY - Pursuant to R.I.G.L. Section 15-5-16.2, all support orders established or modified in the state on or after 10/1/98 shall be recorded with the Rhode Island Family Court regardless of whether services are being provided by the child support program. This information is provided to the federal registry and shared by all states.

- All cases must be recorded by completing part A of the CSS-1 form(attached).
- All cases must be recorded regardless of the fact that the court did not order wage withholding.
- The CSS-1 form must be completed and filed with the court upon completion of the hearing.
- Changes in the general information must be provided on the CSS1form withthin ten (10) days of the change.
- If there is a history of domestic violence, this must be indicated on the form. If indicated on the form, address information will not be released by the federal registry without a court order.

B. STATE DISBURSEMENT UNIT FOR THE COLLECTION AND DISTRIBUTION OF CHILD SUPPORT - Pursuant to R.I.G.L. Section 15-26-1 all cases in which the support order is initially issued in the State on or after 1/1/98 and in which the income of the obligor is subject to income withholding shall be payable through Rhode Island Family Court.

1. All income withholding orders must be payable through Rhode Island Family Court via a DR-29.
2. The DR-39 was abolished when Section (h) was deleted from R.I.G.L. Section 15-16-10 which previously authorized wage withholding from the employer to the custodial parent.
3. Pursuant to R.I.G.L. Sections 15-16-5-1 and 15-5-24, the court must order wage withholding unless the court finds that there is good cause not to order wage withholding or the obligor and obligee enter into a written agreement or order which provides for an alternative arrangement for the timely payment of support. If the court orders wage withholding, it must be payable through the family court. If no wage withholding is ordered, the order need not be payable through the court.
4. The private cases must be recorded via the CSS-1 form, parts A, B and C and if appropriate attach a wage withholding order.

5. The obligee must provide all information and sign the form if she/he desires to receive payments through the court.
6. The obligee must choose bookkeeping only, in which payments are simply collected and remitted, or full service, in which the obligee would receive all enforcement remedies. By signing the form, the obligee is acquiescing in the service requested.

V. FAILURE TO PAY SUPPORT-ENFORCEMENT TECHNIQUES

A. Motion to Adjudge in Contempt

If an obligor falls behind in his child support payments, a motion to adjudge in contempt may be filed. If the court finds that the obligor had the ability to pay child support and willfully failed to do so, the obligor may be found in willful contempt and may be incarcerated until such time as he purges his contempt. If the individual is employed, the court has discretion to order work release. The court may also place a lien on the obligor's assets.

Pursuant to Family Court Administrative Order No 92-1, when an individual is found in willful contempt and sentenced to the Adult Correctional Institution, a review by the court shall occur at least once every thirty (30) days to establish "what efforts are being made by the committed individual to comply with said orders, and whether it is still necessary for that individual to continue to be confined at the ACI."

Oftentimes, if the committed individual has been able to make a substantial payment toward the amount due on arrears, the court will probably release that individual from incarceration. The court may first make inquiry of the obligee to determine if there are any strenuous objections to release. The court must also be convinced that the individual cannot raise any additional monies if he remains incarcerated.

Should the individual be released, the court will usually schedule a review date to determine if the individual is in compliance.

If the individual is unemployed, the court may refer that person to the Family Court Investigating Unit (FCIU). This office is exceptional in working with an individual for assistance in securing some type of employment. (This office is also utilized by the court in other matters such as conducting investigations relating to custody and visitation issues).

The Rhode Island Superior Court has determined that an indigent obligor facing incarceration must be appointed counsel.

B. Credit Bureau Reporting

Pursuant to R.I.G.L. Section 15-25-1, Child Support Enforcement shall provide information regarding the amount of overdue support to consumer reporting agencies. The obligor is provided written notice 10 days prior to the release of information to afford the obligor an opportunity to contest. A hearing will be held by Child Support Enforcement and a determination made as to whether the obligor should be reported.

C. Income Tax Intercept / Administrative Offset

Pursuant to R.I.G.L. Section 44-30,1-1 et al, the Department of Administration, Division of Taxation, Child Support Enforcement shall intercept the tax refund or any federal benefit or loan of an individual who is in arrears. The individual is notified in writing and has an opportunity to be heard prior to the intercept. Procedures followed by Child Support Enforcement are found in R.I.G.L. Section 42-35.1 et al entitled the "Administrative Procedures Act".

D. Child Support Recovery Act

In 1992, Congress passed the Child Support Recovery Act. The act makes the willful failure to pay past due child support with respect to a child living in another state a federal crime.

Elements of the offense include: having the ability to pay child support, willfully failing to pay a known past due amount which has remained unpaid for longer than one year or is an amount greater than \$5000 for a child who resides in another state.

The first offense carries six (6) month imprisonment and/or fine. Subsequent violations carry a two (2) year imprisonment and/or a fine. Child Support Enforcement is working in conjunction with the U.S. Attorneys Office to prosecute cases which meet the elements of the offense.

The act was amended in 1998 to make it a felony if the debt has remained unpaid for longer than two (2) years or in an amount greater than \$10,000.

E. Administrative Wage Withholding

Child Support Enforcement has an administrative income withholding procedure in place. Pursuant to Rhode Island General Laws Section 15-16, if an individual under a support order fails to make a child support payment within 14 days of its' due date, the State can administratively seek (without resort to an order of the court)

to withhold the child support amount as well as an additional (10%) of the child support order that will be applied toward the arrearage.

F. License Revocation R.I.G.L. Section 15-11.1-1 et seq.

1. The department may serve notice upon a support obligor who is not in compliance with a court order, of the department's intention to submit the obligor's name to the appropriate board for license revocation or suspension.

2. Compliance - means that the support obligor is no more than 90 days in arrears in making payments in full for current support or in making periodic payments pursuant to a court order or payment agreement.

3. License - refers to a driver's license, professional, business or occupational license.

4. Upon receipt of the notice the obligor may:

- a. Request a compliance hearing at the Family Court pursuant to Section 15-11.1-4 within 20 days. An automatic stay of any further action will occur.
- b. File a motion to modify with the Family Court. Again an automatic stay will occur.
- c. Pay all past due support or enter into a payment agreement with the department to be filed with the family court.

5. If the obligor does not take the above actions and the 20 day time frame elapses, the obligor will be certified to the appropriate board for suspension.

G. Administrative Liens R.I.G.L. Section 15-21-1 et seq

1. The department, under this chapter may send written notice of intent to lien personal or real property of the obligor for past due support.

2. There is no minimum amount of past due support which is required for the administrative lien to be created.

3. The lien shall incorporate any unpaid child support which may accrue in the future.

4. The obligor may request an administrative hearing within 30 days of receipt of the notice to contest the procedure. If the obligor does not request a hearing or does not appear for the hearing or does not pay the child support due and 30 days expire, the department shall file a notice of lien.

5. This chapter also provides for foreclosure proceedings.
6. Liens may be placed on tangible, intangible property, personal or real property.

H. Access to Information

1. Pursuant to Section 15-22-1 the department shall have access to and may request information about the obligor from the individuals or entities provided in this chapter.
2. The information shall be available only for the purpose of and to the extent necessary for the administration of the child support program.
3. Entities include but are not limited to employers, utility companies, assessors office, licensing boards, financial institutions, credit bureau, etc.
4. A \$100.00 penalty may be assessed by the department or the family court for each violation.

I. State Criminal Prosecution

1. Pursuant to Section 11-2-1.1 of the R.I. General Laws entitled "Failure to pay child support" an individual who has incurred an arrearage of past due support in the amount of \$10,000 or who has willfully thereafter having the means to do so, fails to pay one or more installments or who willfully over a period of three (3) years failed to pay child support shall be guilty of a felony for each instance of failure to pay and upon conviction, be punished by imprisonment for period not to exceed five (5) years.
2. Pursuant to Section 11-2-1 of the R.I. General Laws entitled "Abandonment or nonsupport of spouse or children". Any individual who shall neglect to provide according to his or her means shall be guilty of a misdemeanor and shall be punished by imprisonment for not more than six (6) months.

Note: This statute does not mandate that a court order for child support exists.

J. Insurance Intercept Law

Chapter 57 of Title 27 entitled "Insurance Intercept Act" provides that any domestic insurance company making a settlement of any claim of \$10,000 or more, must access the Rhode Island Website to determine if the obligor is on the list. All obligors,

owing past due support in the amount of \$500 or more, will be reported to the website. If the claimant is on the list, the insurance company must remit payment for past due support.

1. The insurance company must access the website thirty (30) days prior to paying the claim to determine if the claimant owes child support.
2. The obligor is notified of the payment to Rhode Island Family Court and of his/her right to request judicial review within thirty (30) days.
3. The payment is held in escrow at Rhode Island Family Court for a period of forty-five (45) days.
4. The insurance company may deduct payment for attorneys fees, health care providers and assignment to the department of human services, before payment to the Rhode Island Family Court.
5. Arrearages from all the obligors' cases will be reported to the website.

K. Miscellaneous Enforcement Techniques

1. Restraining Orders: Child Support Enforcement will also pursue restraining orders on personal injury claims, workers' compensation claims and bank accounts to name a few.
2. Bonds: Pursuant to Section 15-5-16.6 the court may require an obligor parent to post a bond, which will be deposited with the registry of the court to satisfy or to secure future support.
3. Body attachments

When pursuing motions pertaining to establishment of child support, modification of an existing order or contempt, it is wise to have the individual served with a witness subpoena and a summons. If the individual does not appear in court, the subpoena will allow you to request a body attachment.

A body attachment is a civil warrant for a person's arrest. The issuance of the body attachment will be indicated on a statewide computer that is researched by law enforcement officials in many situations including when a person is detained for a traffic violation. This may assist you in apprehending the individual.

Once the court has issued a body attachment, you may ask the Court not to withdraw the body attachment upon presentment and to have the individual held at the ACI until you and your client are notified. This will give you an opportunity

to be heard in court. Also, the court may, on its own volition, order that the body attachment not be withdrawn in order to insure the individual's appearance on the next scheduled court appearance.

You may also ask the court to consider the issue of having your client be reimbursed for lost wages when the individual is apprehended and presented on the body attachment. Pursuant to R.I. General Laws Section 15-5-16.2.3, entitled "Continuances--Compensation for lost wages", the court has discretion to award lost wages to one party when the other party requests a continuance and there is no mutual agreement. An argument can be made that the issuance of a body attachment is comparable to a continuance in that the matter before the court was not addressed.

5. Judgment for Debt

Pursuant to R.I.G.L. Section 15-5-16.3 entitled: "Allowance regarded as judgment for debt". A child support order is regarded as a judgment for debt and therefore, suits may be brought or execution may issue thereon for amounts due and unpaid.

In Calcagno v. Calcagno 120 RI 723,391 A2D 79 (1978), the Supreme Court held that unpaid child support allowances were in the nature of a final judgment and could not be retroactively disturbed.

6. Interest

Rhode Island General Laws Section 15-5-16.5, entitled "Interest on Arrearages", provides the court with the discretion to award interest on child support arrears at twelve (12%) per annum.

Also, Rhode Island General Laws Section 9-21-8, entitled "Interest on judgment for money" provides that every judgment shall draw interest at twelve (12%) percent per annum. The key word here is "shall" as opposed to Rhode Island General Laws Section 15-5-16.5 being discretionary. Since Calcagno, supra, held that unpaid child support is a final judgment, Rhode Island General Laws Section 9-21-8 would also apply.

Interest is calculated on all cases on the IV-D computer system at the rate of 1% per month on the unpaid balance.

7. Reimbursement

Previously, this topic was a hotly contested issue between the State, defense attorneys and the public. Hypothetically, if a FIP recipient was receiving the sum of \$125.00 per week and the non custodial parent was under a support order to pay \$50.00 per week based upon his/her present ability, the State would have a deficit of \$75.00 per week. The concept of reimbursement consisted of the State bringing an action against the non custodial parent subsequent to the child's emancipation and seeking to

recoup the difference between the AFDC remitted and the child support paid by the obligor.

The Rhode Island Supreme Court case of Lallier v. Lallier, 591 A2d 31 (R.I. 1991) held that the State is allowed to recover the full amount of AFDC benefits remitted and may pursue this reimbursement from one or both parents since they are both jointly and severally liable.

However, Section 15-11-8 of the Rhode Island General Laws, as amended in 1992, restricts the State's ability to seek reimbursement to cases of fraud, misrepresentation or false statement. It also provides for the removal of liens previously placed on real estate and personal property used in securing reimbursement and for the suspension of all reimbursement orders.

VI. TERMINATION OF CHILD SUPPORT

An non custodial parent is obligated to pay child support until the child has reached the age of eighteen (18) years and has graduated from high school. Pursuant to Rhode Island General Laws Section 15-5-16.2 (B), the court has discretion to order support for ninety (90) days after graduation, but in no case beyond their nineteenth (19th) birthday. This statute was amended in 1998 to allow child support to continue until the 21st birthday if the child is severely physically or mentally impaired.

Lastly, the non custodial parent has the obligation to petition the court in order to terminate support payments. In Calcagno, the court held that support payments for a child did not automatically terminate when the child became emancipated.

VII. FAMILY COURT RECIPROCAL CALENDAR

A. Overview

The Family Court Reciprocal Calendar is a unique calendar that includes paternity, custody, visitation and child support matters. The common distinctions between this calendar and the domestic calendar are basically twofold: one, the parties assigned to the Reciprocal Calendar are usually single with children in common as opposed to those who are divorced (and have a previously assigned domestic civil action number); two, almost all cases on this calendar involve the Rhode Island Department of Administration, Division of Taxation, Child Support Enforcement, as either those who are recipients of Aid to Families with Dependent Children (AFDC) or private citizens who are utilizing the state's services (commonly referred to as non-AFDC cases).

The Honorable Debra DiSegna, Magistrate of the Court, presides daily over this calendar. Magistrate DiSegna's courtroom is located on the fifth floor in Room C.

When venue lies in other counties, the Reciprocal Calendar (many consisting of Child Support Enforcement cases) is heard on scheduled days. Reciprocal cases are heard in Newport County on Tuesday and in Washington County on Thursday. There are no reciprocal cases heard in Kent County, only domestic cases on Monday. These cases are heard by the Justices assigned to that particular county.

In Providence County, the Honorable George DiMuro Magistrate of the Court, hears reciprocal and domestic cases daily in Courtroom 3c.

B. Purpose

Pursuant to R.I.G.L. Section 15-11, entitled "Reciprocal Enforcement of Support", the purpose of the Reciprocal Court is "to improve and extend by reciprocal legislation the enforcement of duties of support." It seeks to bring uniformity with other states.

The Reciprocal Calendar contains those petitions where both parties reside in this State as well as those where only the non custodial parent resides in this State. The latter type of case is commonly referred to as a UIFSA (Uniform Interstate Family Support Act) case.

Through UIFSA, a custodial parent who resides in one state may seek relief against the non custodial parent who resides in another state in a quick and inexpensive fashion.

C. Powers of the Magistrate

Pursuant to the Family Court Administrative Order No. 89-3, and in accordance with R.I.G.L. Section 8-10-3.1, Magistrates DiSegna and DiMuro have the following authority relative to incarcerating an individual:

1. Adjudicate a person in contempt and to order him imprisoned for not more than seventy-two (72) hours, pending review by a justice of the court for failure to appear in a response to a summons or for refusal to answer questions or produce evidence or for behavior disrupting a proceeding;
2. Adjudicate a party in contempt and to order him imprisoned for not more than seventy-two (72) hours pending review by a justice of the court for failure to comply with a pending order to provide support or perform any other act. Upon completion of seventy-two (72) hours said cases will be reviewed by the Chief Judge in Providence County.

D. Affirmation Hearings

If an individual is found in willful contempt he may be incarcerated for up to three (3) days the Magistrates. This person is subsequently brought before the Chief Judge (or in his absence, an Associate Justice or General Magistrate as designated by the Chief Judge) and the matter is reviewed to determine whether the individual should be released or remanded. As defense counsel you must demonstrate to the court that your client has made an effort to purge him/herself of contempt. Efforts include requesting loans from family members, friends, an employer, a bank or credit union; lining up a job for work release; exhausting all savings accounts, checking accounts, retirement accounts.

E. Appeals of the Magistrate's Decision- Administrative Order 77-8.

"Individuals wishing to appeal a decision of a Family Court Magistrate should file a stipulation claiming such appeal with the Reciprocal Office. Within five (5) days of filing this stipulation, the appellant must file with the Reciprocal Office a decision containing findings of fact pertaining to the hearing in question. Such findings should be signed by the Magistrate who rendered the decision. No appeal will be in order unless the decision containing the findings of fact is filed.

APPENDIX

Income Withholding Order DR-29

CSS-1

Child Support Guideline Worksheet DR-30

Administrative Order 97-8

Administrative Order 2002-3

Child Support Chart

R.I. Gross to Net conversion

Form 2441 Credit for Child and Dependent Care Expenses

Sample Motion for Support

Sample Paternity Complaint

Sample Petition for Voluntary Acknowledgment (court form)

Sample Motion to Adjudge in Contempt

Family Court Order to Terminate Wage Assignment

Body Attachment Order

Sample DNA report

Sample Motion for Summary Judgment

Sample Motion for Bond

Sample Request for Admission

Sample Interrogatories

Sample Motion for DNA

Sample Affidavit of Paternity

Parent Locate Packet